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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,436	10/17/2002	Frederick L. Travelute III	3000.166	8668

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EXAMINER

BOYD, JENNIFER A

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 12/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/065,436

Applicant(s)

TRAVELUTE ET AL.

Examiner

Jennifer A Boyd

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2 and 4-86 is/are pending in the application.
- 4a) Of the above claim(s) 39-71 and 80-86 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2, 4-38 and 72-80 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/28/04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The Applicant's Amendments and Accompanying Remarks, filed September 28, 2004, have been entered and have been carefully considered. Claims 2, 3 and 11 – 14 are amended, claims 1 and 3 are cancelled and claims 2, 4 – 38 and 72 – 80 are pending. The Examiner thanks the Applicant for the submission of complete translations of Japanese Patent Application Publications 57-139600 and H3-287848. In view of the Applicant's submission of a complete translation of Japanese Patent Application Publication 57-139600, the Examiner has slightly revised the previously set forth rejections over JP 57139600A in the Office Action dated June 28, 2004 below. As a result, the 35 U.S.C. 103(a) rejection of claim 75 as being unpatentable over JP 57139600A as been withdrawn as detailed in paragraph 10 of the Office Action dated June 28, 2004. In view of Applicant's submission of the complete translation of Japanese Patent Application Publication H3-287848, the Examiner has slightly revised the rejection as detailed in paragraph 11 of the Office Action dated June 28, 2004. Otherwise, all previously set forth rejections as detailed in the Office Action dated June 28, 2004 are maintained. The invention as currently claimed is not found to be patentable for reasons herein below.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

3. Claims 1 – 5 and 11 – 15 remain rejected under 35 U.S.C. 102(b) as being anticipated by Shiozaki et al. (US 4,336,307). The details of the rejection can be found in paragraph 7 of the previous Office Action dated June 28, 2004. The rejection is maintained.

Claim Rejections - 35 USC § 102/103

4. Claims 1 – 2, 4 – 10 and 72 – 80 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over JP 57139600A. The details of the rejection can be found in paragraph 9 of the previous Office Action dated June 28, 2004. The rejection is maintained.

In view of the Applicant's submission of a complete translation of Japanese Patent Application Publication 57-139600, the Examiner discovered that JP 57-139600 does disclose the type of polyester used for the staple fiber. In section 3 of the complete translation of JP 57139600A, the use of polyester derived from terephthalate is discussed. In the Example, 50% drawn polyethylene terephthalate staple fibers and 50% undrawn polyethylene terephthalate fibers are used to create the nonwoven fiber sheet.

Claim Rejections - 35 USC § 103

5. Claims 16 – 38 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Tamiya et al. (JP 03-287848) in view of Jennergren (US 6,368,990). The details of the rejection can be found in paragraph 11 of the previous Office Action dated June 28, 2004. The rejection is maintained.

As to claim 16, Tamiya teaches a fabric composed of composite fiber consisting of two polymers and a hollow section as the core component. In example 1, Tamiya indicates that the sheath-core fiber is a continuous filament.

Response to Arguments

6. Applicant's arguments filed September 28, 2004 have been fully considered but they are not persuasive.

7. In response to Applicant's argument that the inclusion of the pore forming agent of Shiozaki materially affects the basic and novel characteristics of the filament, the Examiner submits that there is no evidence of record to substantiate Applicant's allegation. If the basic and novel characteristics of the Applicant's invention is the ability to fill with a liquid, nothing added by Shiozaki impairs that characteristic. Furthermore, the Applicant must evidence such addition impacts the basic and novel characteristics. As noted, such evidence is lacking; see MPEP 2112.

8. In response to Applicant's argument that JP 57139600 A is silent with respect to openings in the filament that allow water or other liquids to enter the filament via capillary action, the Examiner respectfully submits that the Applicant does not require in any of the claims that the liquids enter the filament via capillary action. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Furthermore, it should be noted that JP 57139600 A teaches that the fiber is hollow and it is the position of the Examiner that any hollow material can be filled with a liquid.

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9. In response to Applicant's argument that JP 57139600 A provides no motivation to provide a single kind of homogenous polyester filament, staple fiber or nonwoven fabric, the Examiner respectfully points out that no such requirement is made by the claims. Applicant's argument is not commensurate with the scope of the claims. The claim language only requires the presence of some polyester fibers or filaments that comprise polyethylene terephthalate. Furthermore, for instance in claim 8, it is required that the nonwoven material is made of a plurality of staple fibers but the claim does not require that all the fibers in the nonwoven are of a certain type.

10. In response to Applicant's argument that the presence of two kinds of polymer in the hollow filaments of Tamiya (JP H3-287848) would materially affect the basic and novel characteristics of the invention, the Examiner respectfully submits that there is no evidence of record to substantiate Applicant's allegation. If the basic and novel characteristics of the Applicant's invention is the ability to fill with a liquid, nothing added by Tamiya impairs that characteristic. Furthermore, the Applicant must evidence such addition impacts the basic and novel characteristics. As noted, such evidence is lacking; see MPEP 2112.

11. In response to Applicant's argument that Jennergren teaches away from fabrics consisting essentially of polyethylene terephthalate, it should be noted that the Examiner has used the Jennergren to teach motivation for using filament or staple fibers and not to justify the use of polyethylene terephthalate. It should be noted that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The Examiner respectfully points out that the claims do not require

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that the fabric “consist essentially of” anything. The consisting essentially of limitation is only to the filament. Applicant’s argument is not commensurate with the scope of the claims.

12. In response to Applicant’s argument that Tamiya (JP H3-287848) and Jennergren (US 6,368,990) fail to teach the specified absorption capability range, the Examiner submits that the absorption capability range is inherent to the fibers of Tamiya in view of Jennergren. Since Tamiya in view of Jennergren reads on the claimed chemical and structural limitations, it is asserted that the claimed absorption capability must be inherent to the prior art product. If said property is not inherent, it is asserted that Applicant’s claim must be incomplete. In other words, if Applicant’s asserts a lack of inherency in the prior art product, then Applicant’s claimed invention is missing an element that is critical to the invention, which would patentably distinguish it from the known prior art.

13. In response to Applicant’s argument that any fiber blend would materially affect the basic and novel characteristics of the claimed invention, the Examiner respectfully submits that the Applicant has failed to provide any evidence to substantiate such a position. The Examiner requests that the Applicant clearly state what are the basic and novel characteristics of the invention and how the use of any fiber blend rather than 100% polyethylene terephthalate would affect the basic and novel characteristics of the invention. Care should be taken to remain consistent with the instant disclosure.

Conclusion

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

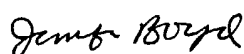
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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A Boyd whose telephone number is 571-272-1473. The examiner can normally be reached on Monday thru Friday (8:30am - 6:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jennifer Boyd
11/23/04


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